

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GARY DREWS,

Plaintiff,

vs.

**JOBO’S INC. d/b/a BJ ROOSTERS,
et al.,**

Defendants

Civil Action No. 1:14-cv-03774-ODE

CONSENT MOTION TO APPROVE SETTLEMENT

Plaintiff Gary Drews, through the undersigned counsel and with the consent of Defendants Jobo’s, Inc., Robert Hamill, and John Molinari hereby moves this Court to approve their settlement of all claims in the above-styled action. In support of this Motion, Plaintiff shows the Court as follows:

1.

On or about April 8, 2014, Plaintiff Gary Drews filed an Amended Complaint in this Court seeking relief for alleged violations of the Fair Labor Standards Act (“FLSA”) with respect to the alleged failure to properly pay him minimum wages by Defendants Jobo’s, Inc., Robert Hamill, and John Molinari.

2.

The Parties, acting at arms-length and in good faith and with the advice of counsel, negotiated and entered into a Settlement Agreement (“the Agreement”). A copy of the Agreement is attached hereto as Exhibit “A”.

3.

Pursuant to *Lynn’s Food Stores, Inc. v. United States of Am.*, 679 F.2d 1350, 1353 (11th Cir. 1982), judicial approval is required to give effect to Plaintiff’s release of her FLSA claims, which is material to the Settlement Agreement.

4.

In determining whether the Agreement is fair and reasonable, the Court may, but is not required to, consider the following factors:

- (1) the existence of collusion behind the settlement;
- (2) the complexity, expense, and likely duration of the litigation;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the probability of Plaintiff’s success on the merits;
- (5) the range of possible recovery; and
- (6) the opinions of counsel.

See *Leverso v. South Trust Bank of Ala. Nat. Assoc.*, 18 F. 3d 1527, 1531 n. 6 (11th Cir. 1994); *Hamilton v. Frito-Lay, Inc.*, No. 6:05-cv-1592-Orl-22JGG, 2007 U.S.

Dist. LEXIS 10287, at *2-3, (M.D. Fla. January 8, 2007). The Court should be mindful of the strong presumption in favor of finding a settlement fair. *Edwards v. CFR Sales & Marketing*, 2011 U.S. Dist. Lexis 134705) (citing *Cotton v. Hinton*, 559 F. 2d 1326, 1331 (5th Cir. 1977)).

5.

Undersigned counsel submit that this agreement is reasonable in both its terms and amounts. The Agreement affords Plaintiff damages of **\$66,694**, which represents **100% of the damages he claims** for due but unpaid minimum wages, and a like amount as liquidated damages. This amount provides Plaintiff with the full amount he could receive if he took this matter to trial.

6.

Plaintiff's **attorney's fees in the amount of \$25,223.03** have been negotiated separately by Plaintiff's counsel and Defendants' counsel. The agreed upon attorney's fees and costs total the amount billed by counsel at rates previously approved in this Court. The agreed payment of fees and expenses in no way diminishes or reduces the amount of damages to be received by the Plaintiff under the Agreement.

7.

Based on the foregoing, the Parties, through their respective counsel, jointly represent to the Court that the terms of the Settlement Agreement are fair and reasonable under the facts and circumstances of this case, and Plaintiff will receive fair and just compensation for all monies to which he is or could claim to be entitled, under the FLSA, including minimum wages, liquidated damages, interest and attorney's fees.

8.

WHEREFORE, the Parties respectfully request the Court review and approve Parties' Settlement Agreement and dismiss this action with prejudice. A proposed Order is submitted herewith.

This 9th day of December 2015.

Respectfully submitted,

DELONG, CALDWELL, BRIDGERS,
FITZPATRICK & BENJAMIN, LLC

/s/ Matthew W. Herrington

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COUNSEL FOR DEFENDANTS

Pursuant to LR 7.1 NDGa, the undersigned counsel certifies that the within and foregoing motion was prepared using Times New Roman (14 point), one of the fonts and point selections approved by the Court in LR 5.1 C NDGa.

/s/ Matthew W. Herrington

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Georgia Bar No. 275411

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CERTIFICATE OF SERVICE

I hereby certify that on the date shown above, I electronically filed the foregoing document using the CM/ECF system, which will automatically send email notification of such filing to all counsel of record.

Dated: December 9, 2015

/s/ Matthew W. Herrington
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